

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 236

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO FORECLOSURES AND DEFICIENCY JUDGMENTS; AMENDING SECTION 6-101, IDAHO CODE, TO PROVIDE FOR BUT ONE ACTION AGAINST OBLIGORS AND GUARANTORS FOR RECOVERY OF ANY DEBT OR THE ENFORCEMENT OF ANY RIGHT SECURED BY MORTGAGE UPON REAL ESTATE, TO REVISE A DEFINITION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 6-108, IDAHO CODE, TO REVISE HOW AND WHEN THE VALUE OF MORTGAGED PROPERTY IS DETERMINED, TO PROVIDE A LIMITATION ON A DEFICIENCY JUDGMENT, TO PROVIDE FOR APPLICATION OF PROCEEDS FROM THE SALE OF THE PROPERTY, TO PROVIDE A CERTAIN CREDIT AGAINST A DEFICIENCY OWING, TO APPLY THE PROTECTIONS OF THE SECTION TO CERTAIN PERSONS WITH A QUALIFICATION, TO REQUIRE A DEFICIENCY ACTION BE BROUGHT IN ONE ACTION AGAINST CERTAIN PERSONS AND TO PROVIDE THAT ANY ATTEMPT BY CONTRACT OR OTHERWISE TO WAIVE ANY PROVISION OF THE SECTION SHALL BE VOID AS AGAINST PUBLIC POLICY; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 6-101, Idaho Code, be, and the same is hereby amended to read as follows:

6-101. PROCEEDINGS IN FORECLOSURE – CONSTRUCTION OF SECTION – MEANING OF "ACTION" – EFFECT OF FORECLOSURE ON HOLDER OF UNRECORDED LIEN. (1) There can be but one (1) action against obligors and guarantors for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate which action must be in accordance with the provisions of this chapter. In such action the court may, by its judgment, direct a sale of the ~~incumbered~~ encumbered property, ~~for so much thereof as may be necessary~~, and the application of the proceeds of the sale to the payment of the costs of the court and the expenses of the sale, and the amount due to the plaintiff; and sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in the case of sales under execution; (and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt), and it becomes a lien on the real estate of such judgment debtor, as in other cases on which execution may be issued.

(2) The provisions of this section must be construed in order to permit a secured creditor to realize upon collateral for a debt or other obligation agreed upon by the debtor and creditor.

(3) As used in this section, an "action" does not include any of the following acts or proceedings:

- (a) To appoint a receiver for, or obtain possession of, any real or personal property collateral for the debt or other obligation;
  - (b) To enforce a security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property;
  - (c) To enforce a mortgage or other lien upon any real or personal property collateral located outside of the state which is security for the same debt or other obligation;
  - (d) To secure a judgment outside of this state on a debt or other obligation secured by real property in this state and by real or personal property collateral located outside this state;
  - (e) For the exercise, pursuant to section 45-1505, Idaho Code, of a power of sale conferred pursuant to section 45-1503, Idaho Code;
  - (f) For the exercise of any right or remedy authorized by:
    - (i) The Idaho uniform commercial code, title 28, Idaho Code, except the securing of a judgment on the secured debt, including a deficiency judgment, in a court in Idaho; or
    - (ii) The uniform commercial code as enacted in any other state;
  - (g) For claim and delivery of personal property pursuant to chapter 3, title 8, Idaho Code;
  - (h) For the exercise of any right to set off a deposit account, or to enforce a pledge in a deposit account pursuant to a written agreement or pledge or to enforce a banker's lien;
  - (i) To draw under a letter of credit;
  - (j) To collect any debt, or enforce any obligation or right, secured by a mortgage or other lien on real property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a debt or other obligation or right secured by a senior mortgage or other senior lien on the property;
  - (k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt or other obligation;
  - (l) For filing a claim pursuant to the Idaho uniform probate code, title 15, Idaho Code, or to enforce such a claim which has been disallowed;
  - ~~(m) Which does not include the collection of the debt or enforcement of the obligation or realization of the collateral securing the debt or other obligation;~~
  - ~~(n)~~ Which is exempted from the provisions of this section by specific statute;
  - ~~(o)~~ To recover costs of suit, costs and expenses of sale, attorney's fees and other incidental relief in connection with any action authorized in this subsection.
- (4) No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

SECTION 2. That Section 6-108, Idaho Code, be, and the same is hereby amended to read as follows:

6-108. DEFICIENCY JUDGMENTS – AMOUNT RESTRICTED. (1) No court in the state of Idaho shall have jurisdiction to enter a deficiency judgment in any case involving a foreclosure of a mortgage on real property in any amount greater than the difference between

1 the mortgage indebtedness, as determined by the decree, plus costs of foreclosure and sale, and  
2 the ~~reasonable~~ fair market value of the mortgaged property; at the time of sale.

3 (2) Fair market value, as provided for in subsection (1) of this section, is to be  
4 determined by the court in the decree ~~upon the taking of~~ after receiving evidence of such value.

5 (3) In no event may the deficiency judgment exceed the difference between the amount  
6 for which such property was sold and the entire amount of the indebtedness secured by the  
7 mortgage.

8 (4) Any proceeds received from the sale of the property shall be applied to reduce the  
9 indebtedness secured by the mortgage. If mortgage insurance on the obligation is paid for by  
10 the obligor or guarantor, any proceeds paid or payable to the secured creditor for such policy  
11 shall be credited against the deficiency owing.

12 (5) The protections of this section apply to guarantors or co-obligors of any obligation  
13 secured by a mortgage to the same extent as they apply to the grantor of such mortgage,  
14 provided that in applying the deficiency limitation of this section to guarantors, the amount  
15 of indebtedness used in determining the deficiency shall be the amount guaranteed in the  
16 guarantee agreement, if different than the indebtedness secured by the mortgage.

17 (6) An action for a deficiency must be brought in one (1) action against mortgagors and  
18 guarantors of indebtedness secured by the mortgage.

19 (7) Any attempt by contract or otherwise to waive any provision of this section shall be  
20 void as against public policy.

21 SECTION 3. An emergency existing therefor, which emergency is hereby declared to  
22 exist, this act shall be in full force and effect on and after its passage and approval.